	Case 3:06-cv-00102-RCJ-VPC Docum	ent 167 Filed 01/13/09 Page 1 of 3
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6	UNITED STATES DISTRICT COURT DISTRICT OF NEVADA	
7 8		) 3:06-CV-0102-BES (VPC)
9	Plaintiff,	) ) REPORT AND RECOMMENDATION
10	0 vs.	OF U.S. MAGISTRATE JUDGE
11	1 ANGELINA OVCHARIK aka ANGELINA SCHAEFER,	) )
12		) )
13		)
14	This report and recommendation is made to the Honorable Brian E. Sandoval, United State	
15	District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C.	
16	636(B)(1)(b) and LR IB 1-4. Before the court is defendant's motion for attorney's fees and costs (#165	
17	No opposition was filed.	
18	On July 15, 2008, judgment was entered on defendant's motion for order to show cause (#152	
19	and plaintiff's complaint (#2) was dismissed with prejudice (#164). The District Court further ordered	
20	that defendant be awarded attorney's fees and costs expended in preparing for the Rule 30(b)(6	
21	deposition and directed defendant to file a statement of attorney's fees and costs for those legal service	
22	within fourteen days after entry of the Court's order (#163).	
23	3 I. <u>Discussion</u>	
24	Calculation of reasonable attorney's fees is a two-step process. First, the court computes the	
25	"lodestar" figure, which requires the court to multiply the reasonable hourly rate by the number of hour	
26	reasonably expected on the litigation. Fischer v. SJB-P.D., Inc., 214 F.3d 1115, 1119 (9th Cir. 2000)	
27	(citation omitted). Defendant's counsel attests that the law firm billed an hourly rate of \$350.00 for the	
28	partner's time, and an hourly rate of \$250.00	for an associate. The court is familiar with the customary

<sup>1</sup>The court has already considered the time and labor required and the customary fee. LR 54-16(b)(3)(B) and (F).

billing rates for legal services in similar cases and finds that these hourly rates are reasonable for the legal services rendered.

Defendant's counsel provides the court with an itemization and description of the legal services provided by date, the attorney who performed the work, hourly rate, and time expended, as well as the affidavit of Douglas Gerrard, lead counsel for defendant (#165, Ex. C). As more fully set forth in this court's report and recommendation (#162), this court well aware of the circumstances leading to dismissal of this action. Although the legal services rendered in connection with the Rule 30(b)(6) deposition of plaintiff may appear excessive, the court has reviewed the entries carefully and concludes that the hours expended – 39.75 – are reasonable.

Having concluded that the lodestar figure of \$11,512.50 is reasonable, the court must next decide whether to increase or reduce the lodestar amount based upon the *Kerr* factors not already included in the initial lodestar calculation. *Fischer*, 214 F.3d 1115, 1119. Local Rule 54-16 outlines the following factors to consider: (1) the results obtained and the amount involved; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) whether the fee is fixed or contingent; (6) the time limitations imposed by the client or the circumstances; (6) the experience, reputation, and ability of the attorneys; (7) the undesirability of the case, if any; (8) the nature and length of the professional relationship with the client; and (9) awards in similar cases. Defendant's counsel have addressed each of these factors to the satisfaction of this court, and the court finds that there is no basis to deviate from the lodestar calculation in the amount of \$11,512.50. The court has further reviewed the costs of \$395.40, which are specifically attributable to the plaintiff's failure to attend the Rule 30(b0(6) deposition and finds they are reasonable.

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## II. Conclusion

Based upon the foregoing, this court recommends that defendant's motion for attorney's fees and costs (#165) be granted, and defendant is awarded \$11,512.50 in attorney's fees and \$395.40 in costs for a total of \$11,907.90 from plaintiff.

The parties should be aware of the following:

- 1. They may file, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule IB 3-2 of the Local Rules of Practice, specific written objections to this Report and Recommendation within ten (10) days of These objections should be titled "Objections to Magistrate Judge's Report and receipt. Recommendation" and should be accompanied by points and authorities for consideration by the District Court.
- 2. This Report and Recommendation is not an appealable order, and any notice of appeal pursuant to Rule 4(a)(1), Fed. R. App. P., should not be filed until entry of the District Court's judgment.

## III. Recommendation

Based upon the foregoing, this court recommends that defendant's motion for attorney's fees and costs (#165) be **GRANTED**, and defendant be awarded \$11,512.50 in attorney's fees and \$395.40 in costs for a total of \$11,907.90 from plaintiff. Valerie P. (boke

DATED: January 13, 2009.

**UNITED STATES MAGISTRATE JUDGE**